Supreme Court, U.S.
FILED
AUG 3 1992
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92-364

No.

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

JOHN PLEMONS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

## PETITION FOR WRIT OF CERTIORARI

JOHN PLEMONS
In His Own Person
6037 Furnas Road
Indianapolis, Indiana 46241
317-856-3346

## QUESTION PRESENTED

How can the Defendant, John L. Plemons, be charged on a tax violation when Congress has never taxed earned income, as that term is defined at 26 U.S.C. §911 (d)(2)(A)?

## PARTIES TO THE PROCEEDING

All parties to the proceeding are listed in the caption. John L. Plemons is in His Own Person.

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No. _____

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

JOHN PLEMONS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

## PETITION FOR WRIT OF CERTIORARI

John L. Plemons, respectfully petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Seventh Circuit in this case.

## JURISDICTION OF THIS COURT

The judgement of the United States Court of Appeals for the Seventh Circuit was entered on May 12, 1992. This Court has jurisdiction to review the issues presented herein pursuant to 28 U.S.C. §1254 (1).

## POINTS OF LAW THAT HAVE BEEN OVERLOOKED OR MISAPPREHENDED

### POINT 1

(1) Congress has never taxed earned income, as that term is defined at 26 U.S.C. §911 (d)(2)(A), therefore "compensation for personal services actually rendered" was never added to the definition of Gross Income of Title 26 U.S.C. §61 (A).

## JUDICIAL NOTICE

### 2 CLASSES OR KINDS OF WAGES

(A). "WAGES", AS DEFINED AT 26 U.S.C. §911 (d)(2)(A);

(B). "WAGES", AS DEFINED AT 26 U.S.C. §3401 (a).

(A). "WAGES" are defined under the definition of "Earned Income" at 26 U.S.C. §911 (d)(2)(A) as follows:

> In General.--The term "earned income" means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered, but does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered.

## ARGUMENT

The Defendant, John L. Plemons, has never received any Gross or other taxable income for the years in which he was convicted. All "Wages" received by Plemons was earned income as that term is defined as §911 (d)(2)(A), supra. Congress did not include this type of "Wages" under the definition of Gross income at 26 U.S.C. §61 (a)(1).

(B). "Wages", as defined at 26 U.S.C. §3401 (a) are taxed by Congress "on federal employees".

## THE DEFENDANT IS NOT A FEDERAL EMPLOYEE

How can Plemons be imprisoned for failing to file returns on income which Congress has never taxed nor added to the definition of Taxable or Gross Income at 26 U.S.C. §61 (A) and §63?

## COURT ENTERED PLEA

The Defendant, John L. Plemons, did not want to enter a plea that granted jurisdiction to the court and entered his objections on the record to the "Not Guilty" plea as to count(s) I, II, III, and IV that were entered by the United States District Court, Northern District of Indiana. Judge William C. Lee over ruled the Defendant's objections and entered the plea against the Defendant's will. Page "A-7" in the Appendix indicates that the Defendant entered a plea of "Not Guilty", however, that plea is a fabrication created by the court.

## BACKGROUND

Plaintiff states in an ORDER that was filed on January 4, 1991 that defendant, John L. Plemons was charged in a four (4) count information with the willful attempt to evade income taxes in 1983, 1984, 1985 and 1986.

See Appendix page "A-14". This Order is NOT in agreement with the Information that was filed on March 15, 1990, stating that the defendant was charged with Title 26 U.S.C. §7203, Willful Failure to File an Income Tax Return, See Appendix pages "A-48, A-50, A-52 and A-54.

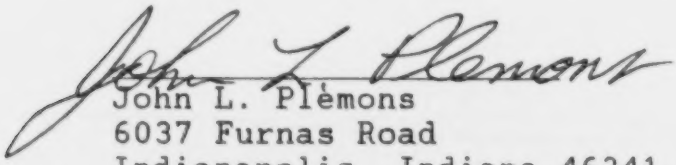
## CONCLUSION

Petitioner submits that this Court should grant certiorari here to rule, explicitly, on the lower court's departures from the actual definitions and meanings that Congress had *actually* intended and had written into Title 26 U.S.C. and because the Defendant's rights were violated due to the court gaining jurisdiction by forcing a plea of "Not Guilty" upon the Defendant.

Based upon the foregoing reasons, this Court should issue a writ of certiorari to the Seventh Circuit Court of Appeals to

review the Judgement-Opinion of the Court of Appeals decision.

Respectfully submitted,



John L. Plemons
6037 Furnas Road
Indianapolis, Indiana 46241
Phone: 317-856-3346

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U.S.C.A.-7th Circuit
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No. 91-1894

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IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

CHICAGO, ILLINOIS 60604

---

Before

Hon. WILLIAM J. BAUER, Chief Circuit Judge

Hon. JOHN L. COFFEE, Circuit Judge

Hon. MICHAEL S. KANNE, Circuit Judge

---

| | |
|---|---|
| UNITED STATES OF AMERICA<br>Plaintiff-Appellee | ) Appeal from the<br>) United States<br>) District Court<br>) for the Northern |
| v. | ) District of Indiana,<br>) Fort Wayne Division. |
| JOHN L. PLEMONS<br>Defendant-Appellant | ) No. 90-CR-8<br>) William C. Lee,<br>) Judge. |

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# PETITION FOR REHEARING IN BANC

PETITIONER
JOHN L. PLEMONS
6037 Furnas Road
Indianapolis, Indiana 462411
Ph. (317) 856-3346

This Petition should be heard in banc because the Defendant was convicted of failing to file returns on a type of income that Congress has never taxed.

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POINTS OF LAW THIS COURT HAS OVERLOOKED OR MISAPPREHENDED.

POINT 1

(1) Congress has never taxed earned income, as that term is defined at 26 U.S.C. §911 (d)(2)(A), therefore, *"compensation for personal services actually rendered"* was never added to the definition of Gross Income at §61 (A) of Title 26 U.S.C..

JUDICIAL NOTICE

2 CLASSES OR KINDS OF WAGES

(A). "WAGES" AS DEFINED AT 26 U.S.C. §911 (d)(2)(A);

(B). "WAGES" AS DEFINED AT 26 U.S.C. §3401 (a).

(A) "Wages" are defined under the definition of "Earned Income" at 26 U.S.C. §911 (d)(2)(A) as follows:

> In General.-- The term "earned income" means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered, but does not include that part of the compensation

derived by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered.

ARGUMENT

The defendant, John L. Plemons, has never received any Gross or other taxable income for the years in which he was convicted. A *"Wages"* received by Plemons was *earned income* as that term is defined at §911 (d)(2)(A), supra. Congress *did not* include this type of *"Wages"* under the definition of Gross income at 26 U.S.C. §61 (a)(1).

(B) "Wages", as defined at 26 U.S.C. §3401 (a) are taxed by Congress *"on federal employees"*.

THE DEFENDANT IS NOT A FEDERAL EMPLOYEE

How can Plemons be imprisoned for failing to file returns on income which Congress has never taxed nor added to the definition of

Taxable or Gross Income at 26 U.S.C. §§61 (a) and 63?

## CONCLUSION

Based upon the foregoing, this decision of the Jury at the lower level should be overturned.

Respectfully submitted,

(Signed)
John L. Plemons
6037 Furnas Road
Indianapolis, Indiana 46241
Ph. (317) 856-3346

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a copy of this Petition For Rehearing was mailed, first class, to the Attorney of record for the United States Government.

(Signed)
John L. Plemons

United States District Court
NORTHERN DISTRICT OF INDIANA

| | |
|---|---|
| UNITED STATES OF AMERICA,<br>Plaintiff-Appellant,<br><br>v.<br><br>JOHN L. PLEMONS,<br>6037 Furnas Road<br>Indianapolis, IN 46241<br>Defendant-Appellee | No. FCR-90-00008<br><br>JUDGEMENT IN A CRIMINAL CASE<br><br>FILED: 17 APR 91 |

Attorney for Defendant:
CHARLES F. LEONARD
202 W. Berry St.
Ft. Wayne, IN 46802

THE DEFENDANT ENTERED A PLEA OF:
Not guilty as to count(s) I, II, III, IV.

THERE WAS A:
Verdict of guilty as to count(s) I, II, III, IV.

THE DEFENDANT IS CONVICTED OF THE OFFENSE(S) OF:
26:7203 FAILURE TO FILE INCOME TAX RETURNS.

IT IS THE JUDGEMENT OF THIS COURT THAT:

The defendant, John L. Plemons, is remanded to the custody of the Attorney General on Count I, for a period of 90 days, and imposition of sentence is suspended on Counts II, III, and IV to run consecutively. The defendant is to obey all local, state and federal laws, comply with the rules and regulations of the Probation Office, the defendant is fined the sum of $1,000. on Count II, $1,000. on Count III, $1,000. on Count IV to run consecutively, for a total of $3,000. which shall be due within the

first year of probation supervision. Th defendant will cooperate with the IRS an assist them in determining the substantiall correct civil tax liability for himself fo the prosecution years of 1983, 1984, 1985 1986, as well as subsequent years wherein hi civil tax liability has not been determined This cooperation shall consist of, but is no limited to, providing any W-2's, cancelle checks, bank statements, deposit slips receipts, invoices, books and records, or an other information pertaining to his ta liability for the above stated years. Th execution of sentence is STAYED pendin appeal.

In addition to any conditions of probatio imposed above, IT IS ORDERED that th conditions of probation set out on th reverse of this judgement are imposed.

CONDITIONS OF PROBATION

Where probation has been ordered th defendant shall:

(1) refrain from violation of any la (federal, state, and local) and get i touch immediately with your probatio officer if arrested or questioned by law-enforcement officer;

(2) associate only with law-abiding person and maintain reasonable hours;

(3) work regularly at a lawful occupation an support your legal dependents, if any, t the best of your ability. (When out o work notify your probation officer a once, and consult him prior to jo changes);

(4) not leave the judicial district withou permission of the probation officer;

(5) notify your probation officer immediately of any changes in your place of residence;

(6) follow the probation officer's instructions and report as directed.

The court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within the maximum probation period of 5 years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

IT IS FURTHER ORDERED that the defendant shall pay a total special assessment of $75.00 pursuant to Title 18, U.S.C. Section 3013 for count(s) II, III, IV as follows:
due immediately

The Court orders commitment to the custody of the Attorney General and recommends:

that surrender shall be voluntary to the USBOP as directed by the USM.

Date of Imposition of Sentence:
April 11, 1991.

Name and Title of Judicial Officer:
Honorable William C. Lee

Date:
April 17, 1991.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

JUDGEMENT - WITHOUT ORAL ARGUMENT

Date: February 27, 1992

BEFORE:
HON. WILLIAM J. BAUER, Chief Circuit Judge
HON. JOHN L. COFFEE, Circuit Judge
HON. MICHAEL S. KANNE, Circuit Judge

No. 91-1894

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JOHN L. PLEMONS,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Indiana, Fort Wayne Division
No. 90 CR 8, Judge William C. Lee

This cause came before the Court for decision on the record from the above mentioned district court.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgement of the District Court in this cause appealed from be, and the same is hereby, AFFIRMED, in accordance with the decision of this Court entered this date.

(1060-010392)

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
Submitted February 18, 1992[1]

February 27, 1992

Before

HON. WILLIAM J. BAUER, Chief Circuit Judge
HON. JOHN L. COFFEE, Circuit Judge
HON. MICHAEL S. KANNE, Circuit Judge

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, Plaintiff-Appellee, | ) | No. 91-1894 |
| v. | ) | |
| JOHN L. PLEMONS, Defendant-Appellant. | ) | |

Appeal from the United States District Court for the Northern District of Indiana, Fort Wayne Division
No. 90 CR 8, Judge William C. Lee

ORDER

A jury convicted John L. Plemons of four counts of willfully failing to file income

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[1] After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." See Fed. R. App. P. 34(a); Cir. R. 34 (f). No such statement having been filed, the appeal has been submitted on the briefs.

tax returns for the years 1983-1986, in violation of 26 U.S.C. §7203. Plemons maintains that because he is a citizen of Indiana, and all states are "foreign countries", he is not a citizen of the United States for tax purposes. Based on this notion of citizenship, Plemons concludes that he is a nonresident alien and argues that all of his income is "foreign earned income" which is exempt from taxation by the United States.

This court recently rejected the contention that citizens of the states are not citizens of the United States for tax purposes in United States v. Sloan, 939 F. 2d 499 (7th Cir. 1991). The appellant in Sloan argued "that he is not a citizen of the United States, but rather, that he is a freeborn, natural individual, a citizen of the State of Indiana, and a 'master'-- not 'servant'-- of his government." Id. at 500. This court concluded: "Mr. Sloan's proposition that he is not subject to the jurisdiction of the laws of the United States is simply wrong." Id. at 501.

Like Sloan, Plemons' arguments are without merit. Indiana is not a foreign country, as Plemons would have this court believe. We need not discuss Plemons' other contentions, as his other arguments were all premised on his erroneous claim that he is not of citizen of the United States for federal taxation purposes.

Plemons' convictions are

AFFIRMED.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

May 12, 1992

HON. WILLIAM J. BAUER, Chief Circuit Judge
HON. JOHN L. COFFEE, Circuit Judge
HON. MICHAEL S. KANNE, Circuit Judge

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, Plaintiff-Appellee, | ) | No. 91-1894 |
| v. | ) | |
| JOHN L. PLEMONS, Defendant-Appellant. | ) | |

ORDER

On consideration of the petition for rehearing with suggestion for rehearing en banc filed in the above-captioned case by the defendant-appellant, all of the judges on the original panel have voted to deny the petition, and none of the active judges has requested a vote on the suggestion for rehearing en banc. The petition is therefore DENIED.

United States District Court
NORTHERN DISTRICT OF INDIANA

| | | |
|---|---|---|
| UNITED STATES OF AMERICA,<br>Plaintiff-Appellant,<br><br>v.<br><br>JOHN L. PLEMONS,<br>6037 Furnas Road<br>Indianapolis, IN 46241<br>Defendant-Appellee | ) | No. FCR-90-00008<br><br><br>FILED: 4 JAN 91 |

ORDER

This matter is before the court on the defendant's motions to dismiss and motion to stay trial and the government's motion in limine. For the following reasons, the defendant's motions to dismiss and motion to stay trial are DENIED. The government's motion in limine is GRANTED.

Background

Defendant John Plemons was charged in a four count information with the willful attempt to evade income taxes in 1983, 1984, 1985 and 1986. The government contends that Mr. Plemons had taxable income in all four years. Mr. Plemons claims, however, that

during the years in question he was not "liable" for taxes under the Internal Revenue Code.

Motion to Stay Trial

The defendant filed a motion to stay trial pending the resolution by the Supreme Court of the issue raised in Cheek v. United States, No. 89-658 (882 F.2d 1263 (7th Cir. 1989)). In Cheek the issue is whether in prosecution for willful violation of tax laws, did the district court err in instructing the jury that willfulness may be negated by defendant's asserted good faith misunderstanding of law only if the defendant's asserted misunderstanding was objectively reasonable. Mr. Plemons argues that under the current position of the Seventh Circuit, he would not be allowed to present a "Good Faith" defense and would effectively be denied his constitutional right to a jury trial on the essential elements of the offenses. Plemons contends

that is would be in the best interest o judicial economy to stay the trial pendin resolution of Cheek and offers to waive hi rights to a speedy trial.

The issue of the Speedy Trial Act is no moot since this court, pursuant to 18 U.S.C §3161 (h), made a determination that the cas was so unusual and complex that the ends o justice served by the granting of continuance outweighed the best interests o the public and the defendant in a speed trial. It is our belief that Cheek will b decided before the March 5, 1991 trial date In the event Cheek is not decided, the court will consider the defendant's motion to stay as a motion for a continuance. Thus, the defendant's motion to stay as a motion to stay trial pending the decision in the Cheek case is hereby DENIED.

Motions to Dismiss

a. Lack of Personal and Subject Matter Jurisdiction or in the Alternative, Motion for Hearing on Status Determination of Defendant in

regard to Federal Income Tax.

Mr. Plemons sets forth three (3) bases in support of his motion to dismiss: (1) He is a "nonresident alien" and not a person required to file under 26 U.S.C. §7203; (2) The special agent had no delegated authority to investigate a citizen of one of the States under the Constitution; and (3) The information filed violated the Fifth Amendment right to grand jury indictment as the information carries a potential three (3) year prison term plus "heavy fines."

Mr. Plemons' arguments have no legal merit. Citizens of Indiana are subject to the provisions of the Internal Revenue Code. See United States v. Price, 798 F.2d 111, 113 (5th Cir. 1986). Further, a citizen of Indiana residing in the state is subject to the jurisdiction of this court. United States v. Sloan, Cause No. FCR 88-2, slip op. at 8 (N.D. Ind. June 5, 1989). In so far as

the defendant is a citizen of the United States, his argument that the special agent Delegated authority to investigate his is without merit.

Defendant also argues that the information filed against him violates his Fifth Amendment right to grand jury indictment because the information carries a potential three (3) year prison plus "heavy fines." Mr. Plemons misunderstands the information filed by the Government and the rules of criminal procedure. For a "capital or otherwise infamous crime," the fifth amendment requires indictment by grand jury, whereas, a crime not punishable for no more that one year is not an "infamous crime" and as such the defendant may be prosecuted by information. Green v. United States, 356 U.S. 165, 183; 78 S.Ct. 632, 642 (1958). Where several misdemeanors offenses are charged in separate counts, as in this case, the fact that the aggregate penalty upon

conviction may exceed one (1) year does not require prosecution by indictment. United States v. Johnson, 585 F.2d 374, 377 (8th Cir.), cert. denied 440 U.S. 921 (1978).

Finally, Mr. Plemons raises the issue of subject matter jurisdiction. Jurisdiction over tax matters have been explicitly given to the district courts by Congress, which provided that the district courts of the United States shall have original jurisdiction over all offenses against the laws of the United States, 18 U.S.C. §3231. Article I, Section 8 of the Constitution and the Sixteenth Amendment empower Congress to create and enforce an income tax. The statute under which Mr. Plemons was charged plainly falls within that authority. This court has personal jurisdiction over the defendant and subject matter jurisdiction over the crime charged. Accordingly, the defendant's motion to dismiss is therefore DENIED.

Magistrate in this case is not a lawful Constitutional Judge under Article III of the U.S. Constitution.

Defendant argues that the charges should be dropped because his initial appearance was before Magistrate Roger Cosbey as opposed to a district judge. The authority of United States magistrates is well documented. Each United States magistrate is authorized to perform the duties prescribed by 28 U.S.C. §§636 (a)(1) and (2), and may exercise all the powers and duties conferred upon United States magistrates by statutes and the Federal Rules of Criminal Procedure. Specifically, Fed.R.Crim.P. 5, grants magistrates the authority to conduct initial appearance proceedings for defendants, informing them of the charges against them and their rights, and imposing conditions of their release. Consequently, defendants argument is without merit and is thereby DENIED.

c. Impossible for defendant to find meaningful assistance of counsel and counsel whom he can repose confidence.

Defendant was appointed the services of Attorney Edward Beck to assist him in his defense. Mr. Plemons, however, failed to contact Mr. Beck, maintaining that the one time he dropped by his office, Mr. Beck refused to see him. Since it was apparent that Mr. Plemons and Mr. Beck could not work together, this court appointed Charles Leonard as stand-by counsel. Mr. Plemons was given the opportunity to decide whether he would represent himself or allow Mr. Leonard to represent him. At the October 22, 1990 hearing, Mr. Plemons decided that Mr. Leonard would only act as stand-by counsel and that he would be proceeding pro se. Mr. Plemons was offered the services of two highly competent attorneys and has refused to utilize them. This conscious decision to forego competent legal advice cannot be the

basis for Mr. Plemons alleging the lack meaningful assistance of counse Accordingly, the motion to dismiss is DENIED

Motion in Limine

The government anticipates that duri trial the defendant will attempt to introdu evidence that will be ruled inadmissible wh offered. In order to facilitate complian with Fed.R.Civ.P. 103(c), the government ha moved in limine that the following enumerate issues be held inadmissible and that th defendant be instructed not to attempt t introduce such evidence at trial:

> (1) That wages are not income and therefore are not subject to federal income tax laws;
> (2) That tax laws are unconstitutional;
> (3) That the Internal Revenue laws and the Sixteenth Amendment cannot allow for the direct taxation of wages;
> (4) That this court does not have personal jurisdiction over the defendant and that individuals such as the defendant are not "persons" required to file income tax returns;

(5) That this court does not have subject matter jurisdiction over the defendant;

(6) That Federal Reserve Notes do not constitute cash or income;

(7) That filing a tax return violates the privilege against self incrimination under the Fifth Amendment to the U.S. Constitution;

(8) That filing of income tax returns is voluntary and not required;

(9) That the subject of jury nullification may be properly presented to the jury;

(10) That civil remedies exist and are more appropriate;

(11) That the defendant's personal history or background may be properly addressed in the opening statement.

Each of these arguments are the repertory of the tax protest movement and have been rejected as patently frivolous by many other courts. See e.g. United States v. Buckner, 830 F.2d 292 (2nd Cir. 1984); United States v. Rice, 659 F.2d 524 (5th Cir. 1981); United States v. Isenhower, 754 F.2d 489 (3rd Cir. 1984); United States v. Pilcher, 672 F.2d 875 (11th cir.), cert. denied, 459 U.S. 973 (1982); United States v. Buttorff, 572 F.2d

619 (8th Cir.), cert. denied, 437 U.S. 9
(1978); United States v. Buras, 633 F.2d 13
(9th Cir. 1980); United States v. Freema
514 F.2d 1184 (10th Cir. 1975). Each
these arguments will receive the sa
treatment in this court and the defendant
therefore ordered not to attempt to introduc
such evidence in the presence of the jury
Accordingly, the government's motion i
limine is hereby GRANTED.

Enter: January 4, 1991.

(Signed)
William C. Lee, Judge
United States District Court

United States District Court
NORTHERN DISTRICT OF INDIANA

| | | |
|---|---|---|
| UNITED STATES OF AMERICA,<br>Plaintiff-Appellant, | ) | |
| v. | ) | No. FCR-90-8 |
| JOHN L. PLEMONS,<br>6037 Furnas Road<br>Indianapolis, IN 46241<br>Defendant-Appellee | ) | FILED: 1 FEB 91 |

MOTION TO RECONSIDER ORDER UPON GOVERNMENT'S MOTION IN LIMINE

COMES NOW the Defendant, John Plemons, by appointed stand-in Counsel, Charles F. Leonard, and hereby moves for reconsideration of the Court's Order entered on January 4, 1991 regarding the Government's Motion in Limine, on the following grounds:

1. On January 4, 1991, the Court granted a Motion In Limine filed by the government which prohibits the Defendant from preventing evidence to the jury on issues which had previously been decided as well settled issues of law.

2. On January 8, 1991, the Supreme

Court of the United States decided Cheek v. United States, No. 89-658 (Decided January 8, 1991).

3. That the Cheek decision reconsiders many issues for formerly long standing precedent regarding federal taxation cases.

4. That several of the issues presently under the prohibition of the Government's Motion In limine are identical to those deemed admissible under the rational of the Cheek decision.

5. That failure to allow the Defendant to present evidence which might negate his willfulness in committing the alleged offenses would raise a serious question under the Sixth Amendment jury trial provision.

WHEREFORE, it is prayed that the Court re consider, in part, its Order of January 4, 1991 regarding the granting of the Government's Motion In Limine.

Respectfully submitted,

(Signed)
Charles F. Leonard, #11030-02
Attorney for Defendant
TREMPER, BECHERT, LEONARD & TERRILL
Suite 120, Metro Building
202 West Berry Street
Fort Wayne, Indiana 46802
Tel: (219) 423-2574

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on the 30th day of January, 1991 he did mail to Deborah M. Leonard, Assistant U.S. Attorney, 3128 Federal Building, 1300 South Harrison Street, Fort Wayne, Indiana 46802 and John L. Plemons, 6037 Furnas Road, Indianapolis, Indiana 46241, a true and exact copy of the forgoing document.

(Signed)
Charles F. Leonard

United States District Court
NORTHERN DISTRICT OF INDIANA

| | |
|---|---|
| UNITED STATES OF AMERICA,<br>Plaintiff-Appellant,<br><br>v.<br><br>JOHN L. PLEMONS,<br>6037 Furnas Road<br>Indianapolis, IN 46241<br>Defendant-Appellee | No. FCR-90-8<br><br><br><br>FILED: 1 FEB 91 |

MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANT'S MOTION
TO RECONSIDER COURT'S ORDER

On January 8, 1991, the Supreme Court of the United States decided Cheek v. United States, No. 89-658 (Decided January 8, 1991).

The Issue before the Supreme Court in Cheek was whether the District Court had erred by instructing the jury that only an objectively reasonable misunderstanding of the law negates the statutory willfulness requirement of violating federal tax laws. Procedurally, the case came before the Supreme Court on a writ of certiorari. The

Seventh Circuit's interpretation of "willfully" as used in the tax statutes conflicted with the decisions of several other Courts of Appeals. Id. at 6. The Supreme Court overturned the Seventh Circuit's prior holdings, which held that good faith misunderstanding of the law negates willfulness only if the defendant's beliefs are objectively reasonable. The Court specifically held that "it was error for the court to instruct the jury that petitioner's (defendant's) asserted beliefs that wages are not income and that he was not a taxpayer within the meaning of the Internal Revenue Code should not be considered by the jury in determining whether Cheek (the defendant) had acted willfully." Id. at 14. The Court reasons that:

> "Characterizing a particular belief as not objectively reasonable transforms the inquiry into a legal one and would prevent the jury from considering it. It would of course be proper to exclude evidence having no relevance or probative value with

> respect to willfulness; but it is not contrary to common sense, let alone impossible, for a defendant to be ignorant of his duty based on an irrational belief that he has no duty."

Id. at 10.

The Court continues by warning that:

> "forbidding the jury to consider evidence that might negate willfulness would raise a serious question under the Sixth Amendment's jury trial provision."

Id. at 10.

In the instant case, the government filed a Motion In Limine regarding the following enumerated issues:

> (1) That wages are not income and therefore are not subject to federal income tax laws;
>
> (2) That tax laws are unconstitutional;
>
> (3) That the Internal Revenue laws and the Sixteenth Amendment cannot allow for the direct taxation of wages;
>
> (4) That this court does not have personal jurisdiction over the defendant and that individuals such as the defendant are not "persons" required to file income tax returns;
>
> (5) That this court does not have subject matter jurisdiction over the defendant;

(6) That Federal Reserve Notes do not constitute cash or income;

(7) That filing a tax return violates the privilege against self incrimination under the Fifth Amendment to the U.S. Constitution;

(8) That filing of income tax returns is voluntary and not required;

(9) That the subject of jury nullification may be properly presented to the jury;

(10) That civil remedies exist and are more appropriate;

(11) That the defendant's personal history or background may be properly addressed in the opening statement.

On January 4, 1991, four (4) days before the Supreme Court decided Cheek, the Court granted the government's Motion In Limine as to all eleven (11) issues and accordingly ordered the Defendant not to attempt to introduce evidence on any of the issues in the presence of the jury.

The Defendant would respectfully assert that evidence of issues (1), (3), (4), (5), (6), (8) and (11) go to whether the Defendant

"willfully" violated a known legal duty under the subjective standard set forth i the Cheek decision.

The Defendant would further assert tha prohibiting evidence of these issues to b presented to the jury would function in th same manner as the trial Court's impropel jury instruction in Cheek in that both forbi a jury to consider evidence that might negat willfulness. To disallow the presentation o evidence on issues (1), (3), (4), (5), (6), (8) and (11) would raise a serious questio as to the violation of the Sixth Amendment jury trial provision in the instant case.

WHEREFORE, it is prayed that the Court reconsider, in part, its Order granting the government's Motion In Limine, specifically items (1), (3), (4), (5), (6), (8) and (11) and allow the Defendant to produce evidence at trial on the issues enumerated..

Respectfully submitted,

(Signed)
Charles F. Leonard, #11030-02
Attorney for Defendant
TREMPER, BECHERT, LEONARD & TERRILL
Suite 120, Metro Building
202 West Berry Street
Fort Wayne, Indiana 46802
Tel: (219) 423-2574

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on the 30th day of January, 1991 he did mail to Deborah M. Leonard, Assistant U.S. Attorney, 3128 Federal Building, 1300 South Harrison Street, Fort Wayne, Indiana 46802 and John L. Plemons, 6037 Furnas Road, Indianapolis, Indiana 46241, a true and exact copy of the forgoing document.

(Signed)
Charles F. Leonard

United States District Court
NORTHERN DISTRICT OF INDIANA

| | | |
|---|---|---|
| UNITED STATES OF AMERICA,<br>Plaintiff-Appellant, | ) | |
| v. | ) | No. FCR-90-00008 |
| JOHN L. PLEMONS,<br>6037 Furnas Road<br>Indianapolis, IN 46241<br>Defendant-Appellee | ) | FILED: 13 FEB 91 |

GOVERNMENT'S RESPONSE TO MOTION
TO RECONSIDER ORDER
UPON GOVERNMENT'S MOTION IN LIMINE

Defendant on February 1, 1991, filed a Motion to Reconsider Order Upon Government's Motion in Limine which asks the Court to reconsider its Order entered on January 4, 1991, granting the Government's Motion in Limine which prohibits defendant from presenting evidence to the jury on the following issues:

1. That taxes are not income and therefore are not subject to federal income tax laws;

2. That tax laws are unconstitutional;

3. That the Internal Revenue laws and the Sixteenth Amendment cannot allow for the direct taxation of wages;

4. That this Court does not have personal jurisdiction over the defendant and that individuals such as the defendant are not "persons" required to file income tax returns;

5. That this Court does not have subject matter jurisdiction over the defendant;

6. That Federal Reserve Notes do not constitute cash or income;

7. That filing a tax return violates the privilege against self-incrimination under the Fifth Amendment to the U.S. Constitution;

8. That filing of income tax returns is voluntary and not required;

9. That the subject of jury nullification may be properly presented to the jury;

10. That civil remedies exist and are more appropriate; and

11. That the defendant's personal history or background may be properly addressed in the opening statement.

Defendant, relying of the recent Supreme Court case, Cheek v. United States, No. 89-658 (decided January 8, 1991) asks the Court to reconsider its Order as it relates to issues 1, 3, 4, 5, 6, 8 and 11. Defendant does not challenge the Court's Order prohibiting defendant from introducing evidence concerning issues 2, 7, 9 and 10 is not challenged and should be enforced. The Government will responde only to the motion to reconsider issues 1, 3, 4, 5, 6, 8 and 11.

The Supreme Court in Cheek overturned the Seventh Circuit's holding that a good-faith misunderstanding of the law or a good-faith belief that one is not violating the law negates willfulness only if the defendant's beliefs are objectively reasonable. In applying its standard for willfulness, the Court held "it was therefore error to

instruct the jury to disregard evidence of Cheek's understanding that, within the meaning of the tax laws, he was not a person required to file a return or to pay income taxes and that wages are not taxable income...." Cheeks v. United States, No. 89-658, 11 (decided January 8, 1991). However, the Supreme Court also held that it was not error for the District Court to instruct the jury not to consider a defendant's claims that tax laws are unconstitutional.

In compliance with the Supreme Court's ruling, defendant in our case should be allowed present evidence of his belief that he was not a person required to file a tax return or pay income taxes; that wages are not taxable income; that Federal Reserve Notes do not constitute cash or income; and that filling an income tax return is voluntary and not required. Additionally, defendant should be allowed to testify as to

how he arrived at such beliefs. However, defendant should not be allowed to state what the law is or present evidence of the law in the form of Court opinions and other legal materials, since only the Court may instruct the jury as to the law. United States v. Burton, 737 F.2d 439, 444 (5th Cir. 1984); United States v. Kraeger, 711 F.2d 6, 7-8 (2d Cir. 1984); United States v. Gleason, 726 F.2d 385, 388 (8th Cir. 1984). As was stated in Cooley v. United States, 501 F.2d 1249, 1253-1254 (9th Cir. 1974), cert. denied, 419 U.S. 1123 (1975):

> We agree that the offered material [copy of a letter appearing in the Constitutional Record, an I.R.S. training manual, and several U.S. Supreme Court opinions] was immaterial and should not have been admitted as evidence. In the orderly trial of a case, the law is given to the jury by the Court and not introduced as evidence. It is the function of the jury to determine the facts from the evidence and apply the law as given by the Court to the facts as found by them from the evidence. Obviously, it would be most confusing to a jury to have legal

> material introduced as evidence and then argued as to what the law is or ought to be.

See also United States v. Mueller, 778 F.2d 539, 540 (9th Cir. 1985), citing with with approval Cooley and United States v. House, 617 F. Supp. 232 (W.D. Mich. 1985).

Since defendant's presentation of his beliefs as to the law may create an issue for the jury concerning questioning questions of law which are long settled, the government requests the Court to give jury instructions on the laws relating to the requirement to file a tax return, the taxability of wages, the taxability of cash or income received in the form of Federal Reserve Notes, and whether filing a tax return is voluntary and not required. In this regard, it may be expedient for the Court to require to parties to submit jury instructions as to the law prior to the trial date, so that any arguments as to the jury instructions

concerning the law, may be settled prior t trial.

In further compliance with the Supreme Court's ruling, defendant should not be allowed to present any evidence that the tax laws are unconstitutional, and that the Sixteenth Amendment is unconstitutional and cannot allow for the direct taxation of wages. Further, this Court has previously ruled that as a matter of law it has personal jurisdiction and subject matter jurisdiction over the defendant. Thus, defendant should not be allowed to present evidence to the jury that this Court has no personal and subject matter jurisdiction over him. Finally, the Government asks the Court to deny defendant's motion to reconsider that his personal history or background may not properly be addressed in his opening statements, unless defendant will take the stand. In the absence of an assertion that defendant will testify, there is no

reasonable basis to believe that a variety of personal information about the defendant, even if relevant, will be elicited at trial. Consequently, there will exist no reasonable basis for including it in his opening statement and the Court should prohibit the statements from being made. See United States v. Dinnitz, 424 U.S. 600 (1976).

Respectfully submitted,

James G. Richmond
United States Attorney

By: Deborah M. Leonard
Assistant U.S. Attorney
3128 Federal Building
1300 So. Harrison Street
Fort Wayne, IN 46802
(219) 422-2595

CERTIFICATE OF SERVICE

This is to certify that I have this 13th day of February, 1991, deposited a copy of the above document in the United States mail at Fort Wayne, Indiana, properly addressed to:

John L. Plemons
6037 Furnas Road
Indianapolis, IN 46241

Charles F. Leonard
Attorney at Law
202 West Berry St.
Fort Wayne, IN 46802

(Signed)
Deborah M. Leonard
Assistant U.S. Attorney

United States District Court
NORTHERN DISTRICT OF INDIANA

| | | |
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| UNITED STATES OF AMERICA,<br>Plaintiff-Appellant,<br><br>v.<br><br>JOHN L. PLEMONS,<br>6037 Furnas Road<br>Indianapolis, IN 46241<br>Defendant-Appellee | ) | No. FCR-90-8<br><br><br>FILED: 4 MAR 91 |

ORDER

This matter is before the court on the defendant's motion to Reconsider Order Upon Government's Motion In Limine. The order dated January 4, 1991, granting the government's motion in limine, prohibits the defendant from presenting evidence to the jury on the following issues:

(1) That wages are not income and therefore are not subject to federal income tax laws;

(2) That tax laws are unconstitutional;

(3) That the Internal Revenue laws and the Sixteenth Amendment cannot allow for the direct taxation of wages;

(4) That this court does not have personal jurisdiction over the defendant and that individuals such as the defendant are

not "persons" required to file income tax returns;

(5) That this court does not have subject matter jurisdiction over the defendant;

(6) That Federal Reserve Notes do not constitute cash or income;

(7) That filing a tax return violates the privilege against self incrimination under the Fifth Amendment to the U.S. Constitution;

(8) That filing of income tax returns is voluntary and not required;

(9) That the subject of jury nullification may be properly presented to the jury;

(10) That civil remedies exist and are more appropriate;

(11) That the defendant's personal history or background may be properly addressed in the opening statement.

In light of the recent Supreme Court decision in Cheek v. United States, 111 S.Ct. 604 (1991), the defendant asks the court to reconsider its order as it relates to issues 1, 3, 4, 5, 6, 8 and 11.

The government, in its response, concedes that Mr. Plemons should be permitted to present evidence of his belief that he was

not a person required to file a tax return or pay income taxes; that wages are not taxable income; that Federal Reserve Notes do not constitute cash or income and that filing an income tax return is voluntary and not required, and that the defendant be allowed to testify as to how he arrived at such a belief. However, the government takes issue with the defendant presenting evidence of what the law is, that tax laws are unconstitutional and presenting personal history or background in his opening statement.

Only the court may instruct the jury as to the law, Cooley v. United States, 501 F.2d 1249, 1253-54 (9th Cir. 1974), cert. denied, 419 U.S. 1123 (1975), therefore, the defendant will not be allowed to state what the law is or to present evidence of the law in the form of court opinions or other legal documents. In addition, the defendant will not be able to present any evidence that the

tax laws are unconstitutional and cannot allow for the direct taxation of wages. Cheek, 111 S.Ct. at 613. Finally, Mr. Plemons is directed to the purpose and scope of an opening statement.

> "It is to state what the evidence is will be presented, to make it easier for the jurors to understand what is to follow, and to relate parts of the evidence and testimony to the whole; it is not an occasion for argument. To make statements which will not or cannot be supported by proof is, if it relates to significant elements of the case, professional misconduct. Moreover, it is fundamentally unfair to an opposing party to allow an attorney, with the understanding and prestige in being an officer of the court, to present to the jury statements not susceptible of proof but intended to influence the jury in reaching a verdict."

United States v. Dinitz, 424 U.S. 600, 612, 96 S.Ct. 1075, 1082 (1976) (Burger, C.J., concurring). Unless the defendant intends to testify at trial, his personal history or background may not be properly addressed in his opening statements.

The court thereby modifies its order to allow the defendant to introduce evidence to

the jury as to paragraphs I -- wages are not income and therefore not subject to federal income tax laws; 4 -- individuals such as the defendant are not "persons" required to file income tax returns; 6 -- Federal Reserve Notes do not constitute cash or income; and 8 -- filing of income tax returns is voluntary and not required. The court reaffirms its order as to paragraphs 3, 5 and 11.

Enter: March 4, 1991.

(Signed)

William C. Lee, Judge

United States District Court

United States District Court
NORTHERN DISTRICT OF INDIANA

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|---|---|
| UNITED STATES OF AMERICA,<br>Plaintiff-Appellant,<br><br>v.<br><br>JOHN L. PLEMONS,<br>6037 Furnas Road<br>Indianapolis, IN 46241<br>Defendant-Appellee | No. FCR-90-00008<br><br>FILED: 12 MAR 90 |

INFORMATION

The United States Attorney Charges:

Count I

That during the calendar year 1983:

JOHN L. PLEMONS,

defendant herein, who was a resident of Fort Wayne, Indiana, had and received gross income of $35,696.50; that by reason of such gross income he was required by law, following the close of the calendar year 1983, and on or before April 15, 1984, to make an income tax return to the representative of the District Director of the Internal Revenue Service for the Internal Revenue District of Indianapolis, at Fort Wayne, Indiana, in the

Northern District of Indiana, or to the Director, Internal Revenue Service Center, at Memphis, Tennessee, or other proper officer of the United States, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well knowing and believing all of the foregoing, he did willfully fail to make an income tax return to said representative of the District Director of the Internal Revenue Service, to said Director of the Internal Revenue Service Center, or to any other proper officer of the United States;

All in violation of Title 26, United States Code, Section 7203.

Count II

That during the calendar year 1984:

JOHN L. PLEMONS,

defendant herein, who was a resident of Fort Wayne, Indiana, had and received gross income of $30,380.84; that by reason of such gross income he was required by law, following the close of the calendar year 1984, and on or before April 15, 1985, to make an income tax return to the representative of the District Director of the Internal Revenue Service for the Internal Revenue District of Indianapolis, at Fort Wayne, Indiana, in the Northern District of Indiana, or to the Director, Internal Revenue Service Center, at Memphis, Tennessee, or other proper officer of the United States, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well knowing and believing all of the foregoing, he did willfully fail to make an income tax return to said

representative of the District Director of the Internal Revenue Service, to said Director of the Internal Revenue Service Center, or to any other proper officer of the United States;

All in violation of Title 26, United States Code, Section 7203.

Count III

That during the calendar year 1985:

JOHN L. PLEMONS,

defendant herein, who was a resident of Fort Wayne, Indiana, had and received gross income of $27,413.10; that by reason of such gross income he was required by law, following the close of the calendar year 1985, and on or before April 15, 1986, to make an income tax return to the representative of the District Director of the Internal Revenue Service for the Internal Revenue District of Indianapolis, at Fort Wayne, Indiana, in the Northern District of Indiana, or to the Director, Internal Revenue Service Center, at Memphis, Tennessee, or other proper officer of the United States, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well knowing and believing all of the foregoing, he did willfully fail to make an income tax return to said

representative of the District Director of the Internal Revenue Service, to said Director of the Internal Revenue Service Center, or to any other proper officer of the United States;

All in violation of Title 26, United States Code, Section 7203.

Count IV

That during the calendar year 1986:

JOHN L. PLEMONS,

defendant herein, who was a resident of Fort Wayne, Indiana, had and received gross income of $12,775.98; that by reason of such gross income he was required by law, following the close of the calendar year 1986, and on or before April 15, 1987, to make an income tax return to the representative of the District Director of the Internal Revenue Service for the Internal Revenue District of Indianapolis, at Fort Wayne, Indiana, in the Northern District of Indiana, or to the Director, Internal Revenue Service Center, at Memphis, Tennessee, or other proper officer of the United States, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well knowing and believing all of the foregoing, he did willfully fail to make an income tax return to said

representative of the District Director of the Internal Revenue Service, to said Director of the Internal Revenue Service Center, or to any other proper officer of the United States;

All in violation of Title 26, United States Code, Section 7203.

James G. Richmond
United States Attorney

(Signed)
Deborah M. Leonard
Special Assistant U.S. Attorney

(Signed)
Robert N. Trgovich
Assistant United States Attorney

## CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing DEFENDANT'S" PETITION FOR WRIT OF CERTIORARI" to the SUPREME COURT OF THE UNITED STATES has been made this 27 day of August, 1992 by United States Certified mail, Postage Prepaid, addressed to: Clerk of the Supreme Court (40+2 copies); 1 First Street, N.E.; Washington, D.C. 20543 and The Solicitor General (3 copies); Department of Justice; Washington, D.C. 20530.

John L. Plemons

JOHN L. PLEMONS

John L. Plemons
6037 Furnas Road
Indianapolis, Indiana 46241